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Held at the Palais des Nations, Geneva,
on Friday, 1 May 1992, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.111/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

INITIAL REPORT OF ROMANIA (CAT/C/16/Add.1)

1. At the invitation of the Chairman, the Romanian delegation took a place at the Committee table.

2. The CHAIRMAN welcomed the Romanian delegation and announced that it was composed of Mr. Nicolae Zaharia, Director of the Department of Research and Legislation of the Ministry of Justice, Mr. Emil Lungeanu, Prosecutor, Department of Organization, Research and Criminology of the Procurator's Office and Mr. Valerian Cioclei, Third Secretary with the Legal and Human Rights Department of the Ministry of Foreign Affairs.

3. Mr. ZAHARIA (Romania) paid tribute to the high quality of the work of the Committee and the activities of Mr. Voyame, Chairman of the Committee, as rapporteur on Romania for the Commission on Human Rights. During his recent visits to Romania, Mr. Voyame had been able to note that the country had definitely rid itself of totalitarian ideology and was endeavouring to build a State subject to the rule of law. In his reports, he had shown in a balanced manner both the positive developments taking place in the country and the negative aspects which continued to exist and which were the legacy of the former regime.

4. Romania's accession to the Convention against Torture was one of the acts which reflected the desire of the authorities to promote human rights. The definition of torture and the penalties to which persons committing acts of torture and inflicting cruel, inhuman or degrading treatment were liable had been introduced into the Penal Code, and several provisions of the Penal Code and the Code of Penal Procedure had been changed. That practice demonstrated Romania's determination to bring its domestic legislation into line with international law. Romania adapted its legislation whenever it acceded to a new convention. Indeed, the establishment of a State subject to the rule of law involved the elaboration of legislation capable of guaranteeing respect for human rights.

5. Since December 1989, many basic decisions had been taken: the death penalty had been abolished, the Securitate had been disbanded, and the Code of Penal Procedure had been considerably changed in order to protect the rights of the human person, ensure the rights of the defence and so forth. Attention should, of course, be drawn to the adoption of the new Constitution by referendum in December 1991. The work of legislative reform was continuing, with particular regard to judicial organization, the application of penalties and the establishment of new forms of non-custodial punishments. Furthermore, departments specializing in human rights had been set up in institutions such as the Ministry of Foreign Affairs, the Ministry of the Interior and the Government Procurator's Office. An interministerial committee had been entrusted with the task of coordinating the activities of those various

departments. Furthermore, bodies set up by or with non-governmental organizations, for example the Romanian Human Rights Institute, encouraged and supported efforts made at the legislative level.

6. Nevertheless, despite the activities of the Government and the non-governmental organizations, abuses were still committed by State agents. It was easier to change legislation than mental attitudes. He hoped that the questions and recommendations of the Committee would serve as a support for the future activities of the Romanian Government.

7. The CHAIRMAN, speaking as country rapporteur, thanked the Romanian delegation for its report and statement, both of which he had found highly satisfactory. While, at the time of his first report on Romania, prepared in 1989 for the Commission on Human Rights, he had had no option but to note that human rights were being violated, the situation had become entirely different. A democratic regime, underpinned by appropriate legislation, was in place; the after-effects of the former regime, particularly mental attitudes, were currently the subject of concern. It should be noted that Romania had acceded to the Convention without entering any reservations and had accepted the procedures provided for under articles 21 and 22. Although relatively brief, the report showed that Romania had indeed adapted its legislation to the Convention. The country was undoubtedly on the right road.

8. The part of the report devoted to general information was clear and interesting. As the question of introducing the crime of torture into domestic penal legislation was frequently a subject of concern to the Committee, it was very satisfying to note that Romania had applied the Convention in the most faithful manner possible by reproducing the terms of the definition of torture given there and by providing appropriate penalties for the offences in question.

9. With regard to article 3, he noted that expulsion was the subject of a special provision in the Penal Code and that, in the event of extradition and refoulement, it was the Convention that applied. That was entirely in keeping with the system laid down in the Convention.

10. Article 5 was not mentioned as such in the report, but its application was dealt with in paragraphs 27 to 32; he would like to know how paragraph 2 of that article was implemented and what constituted the basis of universal competence. Paragraph 39 of the report stated that the Romanian State had jurisdiction to prosecute a person accused of an offence of torture in all the circumstances envisaged in article 5 of the Convention. He would like to know the legal basis for that statement and whether the Convention could be applied directly in such a case. Furthermore, he did not quite understand the meaning of paragraph 32, which stated that the provisions of article 5 and article 6 of the Penal Code were applicable only where an international convention did not provide otherwise. As articles 5 and 6 of the Romanian Criminal Code were in conformity with the Convention, any bilateral convention that derogated from those articles would also derogate from the Convention.

11. Having quoted article 6, paragraph 3, of the Convention, concerning the possibility for any person in custody to communicate immediately with the nearest appropriate representative of the State of which he was a national, he said he was surprised that paragraph 37 of the report said only that the prosecutor must inform a member of the family of the arrested person and, in the last sentence, that the prosecutor must, if the person in custody so wished, inform the diplomatic mission in Romania of his country. It was important that the person in custody should have the right to speak directly with a member of his country's mission.

12. With respect to the implementation of article 8, he was not entirely convinced by the explanation given in paragraph 40 of the report, and wondered whether it was necessary.

13. Article 10 of the Convention was particularly important with regard to the situation in Romania. It was known that the prison personnel, prosecutors, police officers and even judges were still impregnated with the ideas of the former regime, a key element of which had been its contempt for human dignity. Education and training were precisely some of the means that could be used to bring about a change in mental attitudes. The courses already introduced into the curricula of the law faculties and higher institutes of the army and the police force were to be welcomed. He mentioned that he himself had had an opportunity to see a carefully prepared manual intended for the army and the police. The programme for recruiting police and prison personnel and further training courses intended for members of the gendarmerie were also to be welcomed. The only thing missing was a reference to the training of doctors. Lastly, the Romanian Government could not but be commended for making considerable use of the services of the United Nations programme of advisory services and technical assitance in the field of human rights.

14. With regard to the implementation of article 11, he would welcome further information on the manner in which the prosecutor supervised acts in criminal proceedings; during his stay in Romania, he had had the impression that the prosecutors often had difficulty in monitoring the preliminary investigation procedures. In that connection, he recalled that, in the past, the prosecutors had supervised the judges, which was of course no longer the case.

15. With regard to article 13 (para. 47 of the report), it was stated that the prosecutor had the responsibility and the means to act against any abuses of authority by the personnel of the prison administration. He would like to know what those means were and how they were used.

16. With respect to article 14, he would first of all welcome clarification on the operation of the judicial system and civil action in regard to redress (paras. 49 and 51 of the report). With regard to the substantive aspect, he would like to know whether the State was responsible for the actions of its agents, failing which there would be a violation in that respect of the provisions of the Convention. Furthermore, he failed to see, in paragraph 52 and the following paragraphs of the report, the legal basis for the application of article 15. The explanation given was somewhat complicated.

He asked whether it was possible, in that connection, to speak of the direct application of the Convention. Under article 15, each State party should ensure that any statement which was established to have been made as a result of torture should not be invoked as evidence, which implied that the State should provide the means of ensuring the implementation of that article.

17. Before giving the floor to the alternate country rapporteur, he wished to make a number of points which were not necessarily related to the report. It was widely accepted that the quality of legislation was one thing, but practice was another. Although Romania's legislation had largely been adapted to the requirements of the Convention, there still had to be a change of attitudes, particularly regarding conditions of detention. Some lawyers did not consider the beating of a person under arrest in any way unusual. The police was all too often brutal in its treatment of demonstrating citizens, and prison staff did not always respect the dignity of detainees. Furthermore, conditions of detention were often very unsatisfactory: they might not add up to acts of torture, but they bordered on inhuman treatment. There also appeared to be a certain reluctance to institute criminal proceedings when plaintiffs belonged to the opposition or to minority groups.

18. The existing Government could not be seriously blamed, because it was quite clear that prison conditions could not be changed overnight and that considerable financial investment was needed. Nevertheless, the Romanian authorities should do everything they could to demonstrate their intention to improve the situation.

19. He would pass on to the Romanian delegation a number of individual cases which he would not mention in the meeting. He hoped that the Romanian authorities would take the necessary steps to curb any violations which had been committed and to punish the officials responsible. The sentences passed on those guilty of brutality might also usefully be published to demonstrate their determination to the State officials and to encourage the people to regain their trust in the police and the prison administration.

20. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) warmly congratulated Romania on the tremendous progress made since the overthrow of the former regime and thanked the delegation for the quality of the report it had submitted to the Committee, the brevity of which was attributable to the fact that it covered a period of one year only.

21. Paragraph 8 of that report stated that the State was responsible for any injury caused by judicial errors. That was very gratifying. However, that statement was immediately qualified by the words "in criminal cases". He wondered whether that was a restriction and, if so, what were the reasons therefor. The organization of the judicial system was referred to in paragraph 9. In that connection, it would be interesting to have more detailed information on the hierarchy of the courts, the status of the judiciary, the appointment of judges and the organ responsible for their dismissal. He also inquired what, under the new Constitution, was the relationship between the legislature, the executive and the judiciary.

22. It was stated in paragraph 10 that 5,000 members of the police force who no longer met the new requirements had been dismissed. He wondered what offences they had been accused of and whether any of them had used torture; whether any legal action had been brought against them and, if so, what the result had been. In the context of article 3 of the Convention, he would like to know whether a person forming the subject of an expulsion order could appeal and have the execution of the order suspended.

23. Furthermore, he wondered whether the 24-hour detention period referred to in paragraph 34 of the report could be renewed and, if so, by whom and how many times. In the same paragraph, it was stated that a person suspected of an offence could be prohibited from leaving the locality in which he lived for a maximum period of 30 days. It was unclear whether that meant that his residence was put under police surveillance and that the person concerned could not leave it. If so, that would seem to impede his freedom of movement. The report also stated that the prosecutor, and subsequently the courts, could extend that period by 30 days. The person concerned might thus have to go for 90 days without leaving his residence. That would appear to constitute a deprivation of freedom and he wondered whether those 90 days could be deducted from any prison sentence which might later be passed.

24. He inquired what practical methods were used for the mutual judicial assistance between Romania and the States with which it had concluded extradition treaties, referred to in paragraph 41, and whether Romania had concluded extradition treaties with countries to which it was not linked by any international convention.

25. As for article 10 of the Convention, he agreed with the Chairman that it was regrettable that the report made no mention of the training of doctors. With regard to the implementation of article 11, he would like to know what procedures were used for interrogation and whether incommunicado detention was allowed. In connection with article 12 of the Convention, it would be useful to know how complaints of torture could be lodged. In that connection, he wondered whether complaints against police officers were examined as carefully as other complaints. The Committee would also be interested in having some statistics on the prosecution of police officers and on the judgements given.

26. Paragraph 48 stated that Romanian legislation did not provide for any special measures to ensure the protection of complaintants or witnesses against possible ill-treatment. He wondered whether that was an omission. With regard to the provisions for the implementation of article 14 of the Convention, he too thought it essential that the victims of torture should have the possibility of obtaining redress from the State. The person who had inflicted the torture was often unknown or insolvent, in which case the victim risked being left without a remedy. It was unclear what provisions there were in Romanian law to implement article 15 of the Convention. He wondered whether there had been any examples in Romanian case-law of confessions made under torture being invalidated. He would also like to know what, briefly, was the procedure followed in terms of evidence.

27. With regard to article 16 of the Convention, the Committee would like to know, in general outline, what regulations governed the administration of the prisons and, in particular, whether juveniles were segregated from adults, and persons awaiting trial were separated from convicted prisoners, whether there were any special regulations regarding women, whether any high-security quarters existed and what provisions there were in the prison regulations for cases of mutiny or riot.

28. Mr. SORENSEN said that he had much enjoyed reading Romania's report. Clearly by incorporating the Convention word-for-word into its legislation, Romania had equipped itself with the best means of combating torture even though, given the legacy of the former regime, a great deal still remained to be done.

29. It was unfortunate that the training of doctors had not been mentioned in the section of the report dealing with article 10 of the Convention. That was a fundamental issue as doctors unfortunately played an active part in over 60 per cent of the recorded cases of torture. Some attempt at training had in fact been made, since the Danish Medical Association and the Rehabilitation Centre for Torture Victims in Copenhagen had twice organized courses in medical ethics in Romania. It was to be hoped that the Romanian party would strengthen its support for that type of initiative. In the same context, a research programme into violence had been set up, in conjunction with the Romanian Ministry of Health.

30. With regard to article 14, it was essential that a rehabilitation centre should be established in Romania, and he urged the Romanian Government to support the efforts that had already been made to that end.

31. Mr. MIKHAILOV thanked the Romanian delegation for having presented a report which was both of good quality and met the requirements of the Committee. It was also very satisfying to see how Romania had developed and how, with its new Constitution, it had become a democratic and social State. Romania was the first country in Europe to include the concept of torture, within the meaning of the Convention, in its legislation and to revise its Penal Code accordingly. In that respect, Romania's experience was very valuable in the eyes of all other Eastern European countries.

32. Generally speaking, however, Romania's report contained very little information on actual legal practice and the Government might usefully have provided the Committee with some statistics. The traditions of the former regime seemed not to have entirely disappeared.

33. The report made no mention of the Prison Code. He would like to know what the situation was in that respect and whether the Prison Code had been modified to the same extent as the Penal Code and the Code of Penal Procedure. Lastly, newspaper articles had reported that Romania's Supreme Court had found some former leaders guilty of "economic catastrophe". He would like some clarification regarding that crime.

34. Mr. BEN AMMAR paid tribute to the political will of the Romanian leaders who had demonstrated their intention of scrupulously implementing the Convention, and congratulated the Romanian delegation on the frankness with which it had recognized that the after-effects of the former regime still persisted.

35. He wondered what was the current situation in the children's psychiatric institutes. As he recalled, a commission of inquiry had been set up after the events of June 1990. He asked whether its findings had been published and how they had been followed up. Although, as other members of the Committee had said, the training of police officers, judges and doctors was essential, it was also necessary to ensure that a genuine human rights culture was established at every level, particularly in primary, secondary and higher education. In that connection, UNESCO had developed a strategy and means which it could make available to Governments. The purpose was to make democratic changes irreversible.

36. He also emphasized, in passing, the role of the NGOs in protecting human rights and the value of the links between NGOs and the public authorities. In June 1991, the United Nations Centre for Human Rights had organized a conference in Paris which had been attended by national human rights bodies; after the conference, recommendations had been made defining the requirements that such bodies should meet if they were to be able to play their role. Lastly, he repeated the request made by Mr. Dipanda Mouelle for information on the status of judges in Romania and on the guarantees provided for the independence of justice.

37. Mr. EL IBRASHI said he was pleased to note that Romania had adopted drastic measures to eliminate torture; at that stage in the discussion, he would restrict himself to requesting a number of clarifications complementary to the questions already put. First of all, in paragraph 6 of the report it was stated that the prosecutor was responsible for inquiring into cases of torture: he wondered whether that was an exception and whether cases of torture alone were thus entrusted to the prosecutor. As a rule, there were two possible types of preliminary investigation proceedings: investigations could be entrusted either to the District Attorney or to the examining magistrate. It would be useful to know which of the two systems obtained in Romania. He also asked how, in practice, the prosecutor performed the tasks described in paragraph 9 of the report.

38. Mr. Dipanda Mouelle had already mentioned the procedure described in paragraph 10, which had led to the dismissal of several thousand policemen. The same paragraph also mentioned that similar restructuring had taken place in the judiciary. He would like to know whether the parliamentary commission had also been responsible for the dismissal of some prosecutors or magistrates; if such was the case, it would constitute a departure from the principle of the separation of powers, pursuant to which the relevant decision should have been taken by a judicial body. If there had been such a departure from the principle, he asked whether the procedure had been an exceptional one attributable to the revolutionary situation, or whether it would always apply whenever the situation arose. The same paragraph also referred to both the

police and the gendarmerie and he would like to know the exact difference between the two forces. Lastly, he inquired whether the police was required to take action on complaints of torture. If the procurator's office initiate an inquiry, he asked whether the police could also carry out investigations or what its precise role would be in the inquiry.

39. It was stated in paragraph 34 that a person suspected of an offence could be prohibited from leaving the locality in which he lived. It would be useful to know whether the period of such a prohibition would be deducted from any sentence that might be handed down by the courts, and whether the person concerned could appeal - and if so to whom - against such a measure, which could take effect for up to 30 days.

40. It was not clear from the wording of paragraph 40 of the report exactly how article 8 of the Convention was applied in Romania. As for paragraph 45, which stated that periodic analyses of observance of legal provisions by establishments were carried out by the prison administration or by the procurator's office, it did not specify what would occur if those two authorities reached diverging conclusions, or which of them took precedence over the other.

41. Quoting paragraph 51 of the report, he asked what specific provisions allowed a victim to enforce his civil rights and whether the criminal court itself would take a decision on the criminal indemnification action or whether it would inform the victim that he could also initiate a civil action. The paragraph was not clear on that point. Moreover, if the prosecutor decided, in the absence of sufficient evidence, not to press the charges, he wondered whether the victim could appeal against that decision and himself bring an action before the court, as was the case, for instance, in Egypt.

42. Lastly, it was stated in paragraph 59 that a people's advocate (ombudsman) was henceforth responsible for defending human rights in Romania. He asked for details of the precise role of the people's advocate.

43. Mr. LORENZO said he noted with satisfaction that the legal reforms undertaken in Romania were in keeping with the Convention. As the law became more and more in conformity with the Convention, the jurists would have to give way to the sociologists, who would need to seek ways to bring the actual situation into line with the legal standards.

44. On the subject of paragraph 51, he would like to be informed from whom a victim could claim redress or compensation, from the torturer or from the State. Lastly, paragraph 52 mentioned the nullity of statements obtained "by threats, fear or promises of favours or recompense". It was paradoxical that there should be no reference to torture in that instance; he suggested that it might well be judicious for the texts to mention torture specifically as a ground for the absolute nullity of a statement, whether it was made by an accused person or by witnesses.

45. Mr. BURNS congratulated Romania on being one of the very few countries to have set itself the task of adapting its legislation as rapidly as possible to the international instruments to which it had acceded, introducing broad

reforms whose social cost was undoubtedly high. In that connection, two questions came to mind. First of all, he asked whether there was still a security police force in Romania, and if so, to which parliamentary or governmental body it was responsible for its acts. Secondly, a non-governmental organization had reported cases of ill-treatment by the police and of particularly brutal punishments inflicted in some Romanian prisons. It would appear that, although legislation had rapidly been amended and had made good a number of shortcomings regarding the police and the judiciary, the prison system had not been reformed with equal dispatch. Failure to do so was, of course, attributable to the priorities that had had to be set, but it would be useful to know what reforms of the prison system were planned.

46. Mr. KHITRIN said he endorsed the remarks made by the other members of the Committee concerning the report by Romania and would restrict himself to a few observations. His first remark concerned the political prisoners who had been granted an amnesty: he would appreciate information on who exactly they were and of what offences they had been found guilty.

47. An interministerial commission was to be given responsibility for coordinating legislative measures and for combating crime. It would be useful to know the composition of that commission and, in particular, who was to preside over it.

48. As far as the implementation of articles 12 and 13 of the Convention was concerned, the status and functions of the prosecutors did not seem to have been amended in Romania any more than in the other former socialist countries: the alleged victims made their complaints to the prosecutor who monitored the criminal investigation. The prosecutor dealt with complaints filed by detainees (which were or were not followed up at his discretion), prepared the charges, transmitted the case to the court and, in short, supervised the procedure from beginning to end. He could, and frequently did, abuse his powers and accept or reject complaints by alleged victims as he saw fit. Consequently, it would be interesting to know whether there were any plans to restrict the powers of prosecutors and, if so, when. In such an event, he wondered whether some of their responsibilities would be transferred, for example, to an independent commission of inquiry.

49. Lastly, with regard to paragraph 54 of the report, he asked at what stage of the preliminary investigation the defending counsel could intervene.

50. Mr. Zaharia, Mr. Lungeanu and Mr. Cioclei (Romania) withdrew.

The public meeting rose at 11.50 a.m.